

EXHIBIT 73

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL) MDL No. 2804
5 PRESCRIPTION OPIATE)
6 LITIGATION,) Case No.
7) 1:17-MD-2804
8)
9 THIS DOCUMENT RELATES TO) Hon. Dan A.
10 ALL CASES) Polster
11)

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13
14 Tuesday, January 22, 2019
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23 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
24 CONFIDENTIALITY REVIEW
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33 Videotaped 30(b)(6) Deposition of
34 Walmart, through the testimony of Susanne
35 Hiland, held at 4206 South J.B. Hunt Drive,
36 Rogers, Arkansas, commencing at 8:22 a.m., on
37 the above date, before Debra A. Dibble,
38 Certified Court Reporter, Registered
39 Diplomate Reporter, Certified Realtime
40 Captioner, Certified Realtime Reporter and
41 Notary Public.
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54 877.370.3377 ph | fax 917.591.5672
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1 decision. If you're asking about
2 another Masters decision, please
3 clarify for the record so there's no
4 confusion.

5 Q. (BY MR. BOWER) Do you agree
6 that Walmart was aware of the DEA case
7 against Masters prior to 2017?

8 MS. TABACCHI: This is beyond
9 the scope of the notice. The witness
10 can testify in her individual
11 capacity.

12 THE WITNESS: I see the
13 information in this email exchange.

14 Q. (BY MR. BOWER) And are you
15 aware that -- strike that.

16 During this time period, was
17 Walmart a member of the NACDS?

18 MS. TABACCHI: Object to the
19 form.

20 THE WITNESS: Yes.

21 Q. (BY MR. BOWER) Are you aware
22 that sometime in between September of 2015
23 and the time frame of the Masters decision,
24 NACDS submitted an amicus brief in the

1 Masters case?

2 MS. TABACCHI: Object to the
3 form.

4 THE WITNESS: We weren't party
5 to the amicus brief.

6 Q. (BY MR. BOWER) That wasn't my
7 question. Can you -- I'll read back my
8 question. Okay?

9 Are you aware that sometime
10 between September of 2015 and the time frame
11 of the Masters decision in 2017, that the
12 NACDS submitted an amicus brief in the
13 Masters case?

14 MS. TABACCHI: I'm just going
15 to caution the witness not to reveal
16 the substance of communications with
17 counsel. If you are aware of the
18 answer to Ms. Bower's question without
19 having discussed that with counsel,
20 you may answer.

21 THE WITNESS: I'm a member of
22 the NACDS Policy Council. And so
23 there may have been communication
24 about the Masters decision. I don't

1 know the specifics around that
2 communication.

3 Q. (BY MR. BOWER) As a member of
4 the policy -- when were you a member of the
5 policy council for NACDS?

6 A. 2007 to present.

7 Q. As a member of the policy
8 counsel, would you not have reviewed amicus
9 briefs submitted in connection with
10 suspicious order monitoring?

11 MS. TABACCHI: Object to the
12 form.

13 THE WITNESS: No. That was --
14 there were other groups, and there was
15 a group -- a legal group that reviewed
16 and worked on amicus briefs, and I was
17 not a -- I was not a member of that.

18 Q. (BY MR. BOWER) Was anyone from
19 Walmart aware that the NACDS would be
20 submitting an amicus brief in the Masters
21 case prior to its submission?

22 MS. TABACCHI: Object to the
23 form. Beyond the scope.

24 THE WITNESS: Through

1 communication in policy council, it
2 may have -- it may have come up as a
3 topic. It likely did come up. I
4 don't have recollection of the timing
5 or the details of that information.

6 Q. (BY MR. BOWER) Would you agree
7 that Walmart made changes to its suspicious
8 order monitoring program after the Masters
9 decision came out in 2017?

10 MS. TABACCHI: Object to the
11 form.

12 THE WITNESS: The changes that
13 we made were how we reported the
14 orders that we were reviewing.

15 Q. (BY MR. BOWER) Would you agree
16 that Walmart began reporting more orders as a
17 result of Masters Pharmaceutical's decision?

18 MS. TABACCHI: Object to the
19 form.

20 THE WITNESS: We reported
21 orders of interest, and that was at a
22 rate that was higher than -- we had --
23 we had not previously been reporting
24 orders of interest before due

1 diligence was applied to those orders.

2 MR. BOWER: Why don't we take a
3 quick break.

4 MS. TABACCHI: Sure.

5 MR. BOWER: We can be quick, if
6 you want. I don't know how long you
7 need.

8 THE VIDEOGRAPHER: 3:00 p.m.
9 We are off the video record.

10 (Recess taken, 3:00 p.m. to
11 3:22 p.m.)

12 THE VIDEOGRAPHER: 3:22. We
13 are on the video record.

14 Q. (BY MR. BOWER) We are back on
15 the record. Let me hand you what is marked
16 as Exhibit 10, which is a copy of the Masters
17 decision. Take a moment to review it, but I
18 assume you're familiar with that decision;
19 correct?

20 MS. TABACCHI: Just have her
21 look at it, please.

22 (Whereupon, Deposition Exhibit
23 Walmart 10, Masters decision, was
24 marked for identification.)

1 MS. TABACCHI: I did review the
2 decision in preparation.

3 Q. (BY MR. BOWER) Do you have a
4 copy of the decision in the binder you
5 brought with you today?

6 A. Yes.

7 Q. Does the copy that you have in
8 the binder have a Bates number on it?

9 A. It does not. It's one that I
10 printed.

11 Q. So I know there was
12 representation made that --

13 MS. TABACCHI: That would be
14 the one exception, something from a
15 public record.

16 MR. BOWER: No, that's fine.

17 MS. TABACCHI: I thought of
18 that when she mentioned she had it.
19 Otherwise, I'm not aware of anything
20 else. It's either produced or in the
21 public record. There was nothing
22 else.

23 MR. BOWER: Thank you for that.

24 Q. (BY MR. BOWER) So I want to

1 have -- I have a few questions on the
2 decision. Feel free to review the one in the
3 binder or the one I've given you. They
4 should be identical.

5 A. I believe they're identical.

6 Q. Did you review this decision in
7 preparation for your testimony today?

8 A. Yes.

9 Q. And did the folks at Walmart
10 review the decision when it was issued?

11 MS. TABACCHI: Object to the
12 form. Beyond the scope.

13 THE WITNESS: Based on
14 communication and changes that were
15 applied to how we reported orders of
16 interest, the answer is yes.

17 Q. (BY MR. BOWER) So if you just
18 turn -- look at the first page of the
19 Masters, right at the beginning there under
20 the opinion -- are you with me there?

21 The Court notes that -- about
22 two sentences down, that "Over the past two
23 decades, DEA has been battling a steep
24 increase in prescription opioid abuse, a

1 problem DEA views as epidemic."

2 Do you see that?

3 MS. TABACCHI: I'm sorry, Zach.

4 I don't see where you are.

5 MR. BOWER: Sorry. Just on the

6 first page, bottom right-hand corner,

7 about the middle of that paragraph,

8 right under "Opinion."

9 MS. TABACCHI: The Court

10 notes -- oh, "The Court notes." Those

11 are your words.

12 MR. BOWER: Those are my words.

13 MS. TABACCHI: I'm trying to

14 find the Court notes.

15 MR. BOWER: Sorry about that.

16 MS. TABACCHI: Can you do that

17 again?

18 MR. BOWER: Sure.

19 Q. (BY MR. BOWER) The language in

20 the opinion reads, "Over the past two

21 decades, DEA has been battling a steep

22 increase in prescription opioid abuse, a

23 problem that DEA views as an epidemic."

24 Do you see that?

1 A. Yes.

2 Q. Does Walmart have a similar
3 feeling that there's been an opioid epidemic
4 for the past two decades?

5 MS. TABACCHI: Object to the
6 form. Beyond the scope.

7 THE WITNESS: We are aware of
8 the issues, the health issues related
9 to the opioid crisis, epidemic,
10 however it's referred to in ...

11 Q. (BY MR. BOWER) And does Walmart
12 disagree that the crisis has been going on
13 for approximately two decades?

14 MS. TABACCHI: Object to the
15 form. Beyond the scope of the notice.

16 The witness can testify in her
17 individual capacity, not on behalf of
18 Walmart, as to this particular
19 question.

20 THE WITNESS: So I know that
21 there have been issues with controlled
22 substances, diversion, and misuse over
23 a period of -- a long period of time.

24 Q. (BY MR. BOWER) And indeed,

1 would you disagree that Walmart has been in
2 conferences and meetings where those issues
3 were discussed over a long period of time?

4 MS. TABACCHI: Object to the
5 form. Beyond the scope.

6 THE WITNESS: The time period,
7 I don't know. Certainly we've
8 attended meetings where opioid issues
9 have been discussed.

10 Q. (BY MR. BOWER) And you've
11 attended meetings, for example, of the NACDS
12 where opioid issues were discussed; correct?

13 A. Correct.

14 Q. Have you attended other
15 meetings where opioid issues were discussed?

16 MS. TABACCHI: Is the "you" now
17 Susanne Hiland?

18 MR. BOWER: Yeah.

19 THE WITNESS: Yes.

20 Q. (BY MR. BOWER) And have folks
21 from Walmart in addition to yourself attended
22 meetings where opioids were discussed?

23 MS. TABACCHI: Object to the
24 form. Beyond the scope.

1 THE WITNESS: Yes.

2 Q. (BY MR. BOWER) Do you know how
3 long Walmart has been a member of NACDS?

4 A. My knowledge is that it has
5 been at least since the early 2000s.

6 Q. Okay. All right. So I just
7 have a couple questions, then, on the
8 language of the opinion here.

9 If you could turn to page 2.
10 I'm looking at the right-hand column there.
11 The paragraph beginning "Whereas here."

12 Do you see that?

13 A. I see that.

14 Q. About halfway there, the Court
15 describes the reporting requirement.

16 Do you see that?

17 A. Yes.

18 Q. Okay. At the time of this
19 opinion, was Walmart familiar with the
20 reporting requirement?

21 MS. TABACCHI: Object to the
22 form. Beyond the scope.

23 THE WITNESS: Our understanding
24 was that we would -- in our policy,

1 was that we would report orders deemed
2 suspicious to the DEA.

3 Q. (BY MR. BOWER) And at the time
4 of this opinion, did Walmart's policies
5 reflect that the reporting required was a
6 relatively modest one?

7 MS. TABACCHI: Object to the
8 form. Beyond the scope of the notice.

9 THE WITNESS: I don't know that
10 we gauged the modesty of the
11 requirement.

12 Q. (BY MR. BOWER) Well, do you
13 agree here that the Court is stating that the
14 reporting requirement is a relatively modest
15 one?

16 MS. TABACCHI: Object to the
17 form. Beyond the scope.

18 THE WITNESS: I see that
19 represented here.

20 Q. (BY MR. BOWER) And, in fact,
21 after Walmart saw this representation, it
22 changed the way it reported its orders; is
23 that correct?

24 MS. TABACCHI: Object to the

1 form.

2 THE WITNESS: After the Masters
3 decision, we did begin reporting
4 orders of interest before we conducted
5 due diligence.

6 Q. (BY MR. BOWER) And Walmart
7 changed the way it reported its orders
8 because it hadn't been reflecting that the
9 reporting requirement was a relatively modest
10 one; isn't that correct?

11 MS. TABACCHI: Oh, object to
12 the form.

13 Could you please read that
14 back?

15 MR. BOWER: I'll rephrase.

16 Q. (BY MR. BOWER) After the
17 Masters decision came down, Walmart changed
18 the way it reported orders of controlled
19 substances because its prior program did not
20 reflect that the reporting requirement was a
21 modest one, did it?

22 MS. TABACCHI: Object to the
23 form. Beyond the scope.

24 THE WITNESS: We reported

1 orders that were deemed suspicious,
2 which was -- was the process that we
3 had in place pre-Masters.

4 Q. (BY MR. BOWER) And what do you
5 mean by "deemed suspicious"?

6 A. After conducting due diligence
7 on an order of interest, if we could not
8 clear all red flags associated with that
9 order of interest, it was deemed suspicious
10 and then reported to the DEA and not shipped.

11 Q. So prior to Masters, in order
12 for an order to be reported to the DEA,
13 Walmart would have not cleared all red flags
14 in connection with that order; is that
15 correct?

16 MS. TABACCHI: Object to the
17 form.

18 THE WITNESS: That's not
19 correct. I think that's -- that's an
20 incorrect statement.

21 Q. (BY MR. BOWER) Okay. How would
22 you correct that statement?

23 A. The accurate statement is that
24 prior to Masters, Walmart would report orders

1 that were identified as suspicious orders to
2 the DEA.

3 Q. And how would Walmart determine
4 whether an order was a suspicious order prior
5 to Masters?

6 MS. TABACCHI: Object to the
7 form. Asked and answered.

8 THE WITNESS: We would review
9 the orders of interest, conduct due
10 diligence on those orders of interest,
11 identify -- having identified red
12 flags that caused it to be an order of
13 interest, and -- and then, if those
14 red flags could not be satisfied, it
15 would be considered a suspicious
16 order, not shipped, and reported to
17 the DEA.

18 Q. (BY MR. BOWER) And indeed
19 those orders of interest that you were
20 reviewing were flagged, or otherwise
21 identified, because they were, for example,
22 of unusual size; isn't that correct?

23 MS. TABACCHI: Object to the
24 form. Beyond the scope.

1 THE WITNESS: They may have
2 been flagged for the reason of size.

3 Q. (BY MR. BOWER) They were
4 flagged because they were unusual size.

5 Would you agree with that?

6 MS. TABACCHI: Object to the
7 form.

8 THE WITNESS: They may have
9 been flagged because they hit an
10 established threshold. And, in fact,
11 that threshold, as I testified
12 earlier, sometimes was adjusted
13 because that threshold was not an
14 unusual size. It was something that
15 was validated for that location, and
16 those -- and the threshold was then
17 adjusted because it was not unusual.

18 Q. (BY MR. BOWER) So is it your
19 testimony that if a threshold was not
20 adjusted and an order was flagged, that that
21 order would have been an unusual size?

22 MS. TABACCHI: Object to the
23 form.

24 THE WITNESS: No. I was just